

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:

No. C 13-5424 CW

RALPH DOMINIC VACCARO,
Debtor.

Bk. Nos. 13-54338 ASW
13-05145 ASW

ORDER DENYING MOTION TO
WITHDRAW THE REFERENCE

RALPH VACCARO,
Plaintiff,

v.

LONG BEACH MORTGAGE COMPANY;
SELECT PORTFOLIO SERVICING, INC.;
DEUTSCHE BANK NATIONAL TRUST
COMPANY,

Defendants.

Defendants Select Portfolio Servicing, Inc. and Deutsche Bank National Trust Company have filed a motion to withdraw the reference to the bankruptcy court for this adversary proceeding. Pro se Plaintiff and Debtor Ralph Vaccaro did not file a response to the motion to withdraw. Having considered the papers filed by Defendants and the record in the bankruptcy case, the Court DENIES the motion to withdraw the reference.

BACKGROUND

On August 13, 2013, Debtor filed a voluntary Chapter 13 Petition. Defendant Deutsche Bank National Trust Company filed a secured claim in the amount of \$1,028,419.69. On October 18, 2013, Debtor filed an adversary proceeding against Long Beach

1 Mortgage Company, Select Portfolio Servicing, Inc., and Deutsche
2 Bank National Trust Company. In his complaint in the adversary
3 proceeding, Debtor seeks to enjoin foreclosure on his home, on
4 which Defendant Deutsche Bank holds a deed of trust. Debtor
5 alleges that Defendants "broke predatory lending laws and Truth in
6 Lending Act" and seeks damages for violation of the California
7 Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.
8 Bankruptcy Court 13-54338, Docket No. 1 at ¶ 8.

10 DISCUSSION

11 Title 28 U.S.C. § 157 classifies matters in bankruptcy cases
12 as either "'core proceedings,' in which the bankruptcy court 'may
13 enter appropriate orders and judgments,' or 'non-core
14 proceedings,' which the court may hear but for which it may only
15 submit proposed findings of fact and conclusions of law to the
16 district court for de novo review." Security Farms v. Int'l Bhd.
17 of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (quoting 28
18 U.S.C. § 157).

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20 Claims "arising under" or "arising in" Title 11 of the United
21 States Code are core proceedings. In re Harris Pine Mills, 44
22 F.3d 1431, 1435 (9th Cir. 1995). A claim arises under Title 11 if
23 it involves "a cause of action created or determined by a
24 statutory provision of Title 11," while a claim arises in Title 11
25 if it is an administrative matter that arises only in bankruptcy
26 cases. Id. (quoting In re Wood, 825 F.2d 90, 96-97 (5th Cir.
27 1987)). "If the proceeding does not invoke a substantive right
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1 created by the federal bankruptcy law and is one that could exist
2 outside of bankruptcy it is not a core proceeding." Id. (quoting
3 In re Wood, 825 F.2d at 97). "Section 157 . . . mandates
4 withdrawal [of the reference to the bankruptcy court] in cases
5 requiring material consideration of non-bankruptcy federal law."
6 Security Farms, 124 F.3d at 1008 (citing 28 U.S.C. § 157(d)).

7 "The district court may withdraw, in whole or in part, any
8 case or proceeding referred under [§ 157], on its own motion or on
9 timely motion of any party, for cause shown." 28 U.S.C. § 157(d).

10 "In determining whether cause exists, a district court should
11 consider the efficient use of judicial resources, delay and costs
12 to the parties, uniformity of bankruptcy administration, the
13 prevention of forum shopping, and other related factors."

14 Security Farms, 124 F.3d at 1008 (citing In re Orion Pictures
15 Corp., 4 F.3d 1095, 1101 (2nd Cir. 1993)). "A district court
16 considering whether to withdraw the reference should first
17 evaluate whether the claim is core or non-core, since it is upon
18 this issue that questions of efficiency and uniformity will turn."
19 In re Orion Pictures Corp., 4 F.3d at 1101.

20 The claims raised by Debtor in the adversary proceeding are
21 not core claims. Rather, Debtor asserts a claim under
22 California's Consumer Legal Remedies Act, and cites other
23 California law and the federal Truth in Lending Act. None of
24 these claims depend on bankruptcy laws, and any of them could
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1 proceed in another court. Accordingly, the Court finds that
2 Debtor's claims are not core issues.

3 Defendants argue that the efficient use of judicial resources
4 supports a finding of cause because the bankruptcy court can only
5 render a final judgment on non-core proceedings if both parties
6 consent. 28 U.S.C. § 157(c). Defendants assert that Debtor does
7 not consent to entry of a final order of judgment by the
8 bankruptcy court. However, Defendants' exhibit states that Debtor
9 "does consent to entry of a final order of judgment by bankruptcy
10 court." Defendants' Request for Judicial Notice, Exhibit G at 3
11 (emphasis added). Defendants do not state that they do not
12 consent to entry of judgment by the bankruptcy court.
13 Accordingly, this factor does not weigh in favor of a finding of
14 cause to withdraw the reference.
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16 Defendants also argue that the factor of delay and costs to
17 the parties favors withdrawal because the case was recently filed
18 and Defendants have not yet been served with the complaint.
19 Accordingly, Defendants argue that proceeding in this Court will
20 not result in any undue delay or costs. While there might not be
21 any additional delay or cost to proceeding in this Court,
22 Defendants also have not shown that there would be any delay or
23 cost to proceeding in the bankruptcy court. This factor does not
24 weigh in favor of a finding of cause to withdraw the reference.
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1 The next factor is uniformity of bankruptcy administration.
2 This factor does not weigh in favor of a finding of cause to
3 withdraw the reference.

4 Finally, Defendants argue, "because the district court will
5 be involved in this case regardless of whether the reference is
6 withdrawn, there is no forum shopping." Defendants' Motion at 6.
7 However, this argument is based on Defendants' erroneous
8 contention that Debtor does not consent to entry of judgment by
9 the bankruptcy court. This factor also does not weigh in favor of
10 a finding of cause to withdraw the reference.
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12 The Court finds that Plaintiff's claims are not core claims.
13 However, none of the factors to be considered when determining
14 whether cause exists to withdraw the reference weigh in favor of
15 withdrawal of the reference. Accordingly, the Court DENIES the
16 motion to withdraw the reference.
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18 IT IS SO ORDERED.

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20 Dated: 2/27/2014


CLAUDIA WILKEN
United States District Judge